IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2253 OF 2006

Prabhakar R. Churi & Ors. .. Petitioners

Versus

M.D.Devassy & Ors. .. Respondents

Mr.R.P.Lote for petitioners

Mr.Vijay Patil for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9th February 2007.

P.C.

. By this petition under Article 227 of the Constitution of India, petitioners - original disputants, challenge an order of the Maharashtra

State Coop.Appellate Court in Appeal No.3 of 2005. By this order, appeal of the original disputants, challenging the refusal of the trial court to grant an injunction in their favour in the pending dispute, has been dismissed.

2. Mr.Lote, appearing in support of petition, while assailing the impugned orders submits that the photographs at pages 60 to 62 of the petition would show that despite, collecting amounts for carrying out repairs, no repairs have been carried out to the flats of the original disputants. He also submits that the action of society in demanding monies on the basis of the resolutions of the meetings is wholly illegal inasmuch as the decision to carry out repairs has been taken without there being any item on Agenda.

3. Mr.Patil submits that all these aspects cannot be gone into finally and it is for the

disputants to prove allegations in the dispute. The impugned orders are passed on 3rd November 2004 and 24th November 2005 and it is inconceivable that the repairs are not carried out.

4. In my view, the courts below were right in refusing injunction as prayed for, inasmuch as, the repairs could not have been delayed. Similarly, the contribution qua each flat is a matter which cannot be decided finally at this stage. Hence, the orders under challenge do not require any interference in this Court's equitable and discretionary jurisdiction under Article 227 of the Constitution of India.

5. Petition, therefore, is dismissed summarily.

6. However, the dismissal of this petition so also the impugned orders do not in any manner

prevent the petitioners from filing an application in the pending dispute to invoke the jurisdiction of the Coop.Court for seeking appropriate direction to the society to carry out repairs and such application, if made, be decided as expeditiously as possible and uninfluenced by the observations in the earlier orders. Petition dismissed with liberty as above.

(S.C.Dharmadhikari, J)